



STATE OF IDAHO JUDICIAL BRANCH  
**Supreme Court**

**Report to the 2014 Idaho Legislature**

**Why Increasing Judicial Salaries  
Is Necessary Now:**

**District Judge Recruitment  
Challenges Persist**

January 14, 2014

## WHY INCREASING JUDICIAL SALARIES IS NECESSARY NOW:

### District Judge Recruitment Challenges Persist

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## **I. The intractable problem of recruiting highly qualified District Judges.**

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Chief Justice Roger S. Burdick, in his State of the Judiciary speech delivered to the Idaho Legislature on January 24, 2013, framed the issue of the impact of judicial salaries on the recruitment of highly qualified judges:

*As I reported last year, we have continued with our recruitment efforts to make sure that we are attracting the most qualified judges available....*

*Despite these and other efforts we have a significant problem in recruiting district judges. The Judicial Council can rarely send a full slate of four names to the Governor for appointment. In our surveys, and interviews with bar members and judges, it has become apparent that the district judgeship is no longer a highly sought-after judicial position. The reasons are many -- the overwhelming workload that many district judges face in terms of numbers, as well as complexity; the prospect of contested election; as well as the inadequate compensation of that position....*

*While we have a judiciary that is nationally recognized for its commitment to excellence, performance, and accountability, Idaho ranks 46th in compensation for its general jurisdiction judges. We have recognized for many years there is a need to improve the salary of district judges so we can attract highly qualified private attorneys to that position.*

*We can do better.*

Given the great economic downturn beginning in 2007, intuitively one would have expected to see a significant increase in the number of lawyers applying for vacant District Judge positions across the state. However, as demonstrated in this report, that simply has not occurred.

The heart and soul of a strong judiciary is vested in the talent, intellect, and experience that can be attracted to and retained on the bench. The Judiciary competes in the free market during both the recruitment and retention processes for judges. It is well accepted that lawyers who are highly compensated in the free market tend to possess the same desirable characteristics that make good judges.

A judge is required to possess significant knowledge of the law, demonstrate superior wisdom and problem-solving capabilities, and be patient and understanding, all the while being held accountable to Idahoans for whom the judge works. Accountability is reinforced with public elections.

The competence, experience, and wisdom of a high-caliber judiciary are important to Idahoans whose children, lives, liberty, and property are at stake in one form or another in the courtrooms of this state. For many Idahoans, the experience an individual has with a judge in a courtroom will be one of the most significant and long-lasting events in that person's life.

The business climate and quality of life currently enjoyed in Idaho is directly dependent upon a highly qualified judiciary. The quality of justice that Idahoans receive in the foreseeable future will in good measure be influenced by the ability of the Idaho Judiciary to attract people who possess extensive legal experience and wisdom – attributes which come from years of practice and courtroom

experience. In order to recruit and retain those desirable candidates - practitioners who are in the peak years of their trade - judicial salaries must be both competitive and fair.

Moreover, businesses being courted to come to Idaho to establish a presence here will examine the business climate, economic benefits and lifestyle and cost-of-living benefits of a move to Idaho. In addition they will be very interested in the strength and capabilities of the court system, and its ability to resolve business disputes quickly and fairly.

This report primarily focuses on compensation and other challenges associated with recruiting highly qualified District Judges in an effort to assist the Legislature with its deliberations on this critical topic. The true focus of judicial compensation is not about individual judges; rather, it is about the quality of justice that Idahoans will receive in the future.

However, as a part of the need to address recruitment of District Judges by fair and competitive compensation, attention must also be given to the compensation of Idaho's nine Appellate Judges, who currently rank forty-ninth in the nation in compensation. This focus on the critical need to better compensate District and Appellate Judges is not intended to overlook the significant contributions of Magistrate Judges – it is simply a reflection of the fact that there is a persistent problem in attracting District Judge applicants, and to a lesser degree, Appellate Judge applicants.

## **II. 60% of District Judges and 8 of the 9 Appellate Judges will be eligible to retire within the next 5 years.**

The following chart illustrates the number of District and Appellate Judges who are now or will be eligible to retire in the next 5 to 15 years, presenting an imminent recruitment challenge to the Idaho Judiciary.

<b>Eligibility To Retire</b>					
<b>Position</b>	<b>Now</b>	<b>1-5 years</b>	<b>6-10 years</b>	<b>11-20 years</b>	<b>TOTAL</b>
District Judges	12	16	11	6	45
Appellate Judges	7	1	1	0	9
Total	19	17	12	6	54

Presently, 12 District Judges are eligible to retire, and 16 more will be eligible in the next 5 years. With 45 District Judges statewide, these 28 make a 60% turnover of District Judges within this relatively short time frame a very real possibility.

Appellate Judges are also included in this analysis because 8 of the 9 will be eligible to retire within the next 5 years, and significantly, 5 of the 9 Appellate Judges were District Judges at the time of their appointment to the Supreme Court or Court of Appeals. Assuming this trend continues into the future, there could be an even greater number of District Judges to be recruited over the next 5 years.

### **Consequences of Retirements**

It is beyond debate that an increasing turnover of District Judges means a less experienced trial bench, which in turn can impact litigants and businesses in every area of this state in very important ways. Significant judicial turnover amplifies the importance of having applicants with extensive experience apply for these positions so that novice judges can more readily adapt to their new, very challenging role.

### **Compensation is a Key Consideration**

Compensation is not the only factor which influences practicing lawyers in determining whether or not to seek a judgeship, but it is certainly a key consideration. For many, it is the determinative factor in deciding not to apply. Judicial salaries will determine, in good measure, both the quantity and quality of applicants the Judiciary can expect to apply for these openings. If salaries are not addressed this legislative session, the Judiciary will be required to recruit for these numerous vacancies all across the state without the benefit of competitive salaries. The likelihood of receiving the high caliber of applicants for these important constitutional offices will undoubtedly be diminished.

Another practical consideration in recruiting applicants of the highest quality is that most lawyers who choose to become judges do so with a career change in mind. Once selected, and unless defeated in a subsequent election, these individuals will be resolving disputes for Idahoans for a good number of years.

### **III. What makes the recruitment of District Judges unique?**

Idaho's recurring and serious inability to recruit a sufficient quantity of highly-qualified applicants for the District Judge bench on a statewide basis is a distinguishing challenge in state government.

Judges are statutorily required to have a significant number of years of legal experience to be eligible for the position. Most are appointed after a rigorous selection process, with a few achieving the office by public elections. Nowhere else in state government does the Legislature statutorily set compensation to attract professionals who are at the peak of their earning power, already well-established in their careers, and who are required to enter a job where they become accountable through contested elections, and both their public and personal activities are significantly restricted by the Idaho Code of Judicial Conduct.

To further illustrate the unique challenge of recruiting judges, consider that the average District Judge on the bench today is approximately 58 years old with about 29 years of legal and judicial service (the numbers change slightly with each new appointment). When a District Judge retires and a new judge is to be selected, that is the extensive experience Idaho is trying to attract. The public deserves- and the business community demands- a top quality judiciary with this level of experience and ability.

#### **Number of Magistrate versus District Judge Applicants**

The historical numbers of applicants for District Judge positions clearly illustrate the unique challenge. From July 1, 2000, to the present, District Judge vacancies garner less than one-half the number of applicants than for Magistrate Judge vacancies.

**Number Of Magistrate Versus District Judge Applicants**

<b>Judgeship Type</b>	<b>Average number of applications per vacancy</b>	<b>Range of number of applications</b>
Magistrate Judge	14.89	3-33
Appellate Judge	12.83	9-19
District Judge	7.33	3-14

The highest number of applications received for a Magistrate Judge vacancy has been 33; there have been three vacancies since July 1, 2000, that have each garnered over 30 applications. During this same timeframe, the highest number of applications received for a District Judge vacancy has been 14 for a new position in Ada County in 2013, and before that the highest number in the entire state was 11 applicants. More importantly, in the last 13 years there have been on average less than half the number of applicants for District Judge than for Magistrate Judge. Even more compelling, over 80% of Magistrate Judge recruitments have more than 10 applicants, while over 85% of District Judge vacancies have less than 10 applicants.

By way of some “apples to apples” comparisons, consider the following:

- In 2009 there were vacancies for two Magistrate Judges and one District Judge in the Third Judicial District. There were 20 applicants for the Magistrate Judge vacancy in Payette County and 24 for the Magistrate Judge vacancy in Canyon County, but only 8 applicants for the District Judge vacancy chambered in Canyon County.

- Later that same year, in the Sixth Judicial District, there were both a Magistrate Judge and a District Judge vacancy, each chambered in Bannock County. For these vacancies, there were 15 applicants for the Magistrate Judge position and 8 for the District Judge position.
- More recently, in Ada County during the summer of 2012, there were both a Magistrate Judge vacancy and a District Judge vacancy. The Magistrate Judge vacancy drew 32 applicants and the District Judge vacancy garnered 10 applicants.

### **Qualified Applicants to the Governor**

When a vacancy is being filled by appointment, the Idaho Judicial Council considers the applications of those interested in District and Appellate Judgeships. Statutorily, the Idaho Judicial Council is mandated to send the Governor “not less than two (2) but not more than four (4) qualified persons for each vacancy,” “one (1) of whom shall be appointed by the Governor.” I.C. § 1-2102(3).

Since 2000, there have been 43 District Judge vacancies filled by gubernatorial appointment (two are pending, Judge Ron Wilper and Judge Carl Kerrick)<sup>1</sup>. Of these 43 vacancies, the Governor has only received the maximum four names 30% of the time:

<b>Number of Qualified Applicants Transmitted</b>		
<b>Number of Names</b>	<b>Frequency</b>	<b>Percentage</b>
Four Names	13	30
Three Names	19	44
Two Names	11	26

In recent years there have been notable District Judge recruitment challenges throughout the state which further illustrate these concerns:

- In 2008, for a Fourth Judicial District Judge position chambered in Ada County (where about 40% of the active, licensed attorneys in the state reside), there were only 3 applicants, and only 2 names forwarded to the Governor.
- In 2009, for a vacant District Judge position in the Seventh Judicial District, there were only 5 applicants and only 2 names forwarded to the Governor.
- In 2009, there were 2 simultaneous vacancies for District Judge in the Fifth Judicial District. While there were 8 and 10 applicants respectively for the 2 positions, the Judicial Council only forwarded a total of 2 names to the Governor for appointment. As a result, the only “choice” presented to the Governor was which candidate to put in which county.
- In October 2012, there were initially only 2 applicants for the District Judge vacancy in the First Judicial District to be chambered in Sandpoint, and the Judicial Council was forced to extend the application period to seek additional candidates. In the extended period, 9 applicants applied, and 2 withdrew, leaving a field of only 7.
- In October 2012, for a District Judge vacancy in the Third Judicial District, chambered in Canyon County, which is the second most populous county in the state, there were 7 applicants with only 2 names being forwarded on to the Governor.

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<sup>1</sup> See *Attachment 1*, the History of District Judge Recruitments FY 2001 – FY2013.

- In Canyon County in early 2013, a District Judge vacancy garnered 7 applicants but only 2 were found to be qualified and forwarded on to the Governor.
- For the three new District Judge positions created by the Idaho Legislature in 2013 by House Bill 29, only 4 applications were received for Jefferson County, one of which was from out of state, 7 applications were ultimately received for Canyon County following a re-opening period to obtain more applicants, and 14 were received for Ada County (4 of the 7 applicants for the Canyon County position were also applicants for the Ada County position). Of these 3 new District Judge positions, only 3 names were forwarded to the Governor for Jefferson County, 3 names for Canyon County, and 4 names for Ada County.
- While the total number of applicants for the three new District Judges was 25, recruitments for the two new Magistrate Judge positions in Ada County in the summer of 2013 garnered 26 applicants.



## **IV. Significant factors affecting recruitment.**

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A desirable goal is to have at least as many highly qualified applicants for District Judge positions as there are for Magistrate Judge positions, together with a balanced mix of applicants. For District Judge such a mix would include significant numbers of lawyers in private practice, Magistrate Judges, and lawyers with backgrounds in public law (prosecutor, public defender, city attorney, staff attorney or deputy attorney general). There are many reasons why it is desirable to have such a balanced mix of high caliber candidates. Most notably, it provides the Judicial Council good context upon which to compare the slate of candidates to one another in making the best choices to submit to the Governor for consideration. In turn, the Governor would always be presented with 4 highly qualified individuals from whom to select.

### **Mix of Applicants – Magistrate, Public, and Private Sector**

Historically, however, for District Judge positions, neither a large number of applicants nor a balanced mix of applicants has been achieved with consistency across the state. According to data provided by the Idaho Judicial Council, there have been a total of 330 applicants for the 45 District Judge vacancies occurring since 2000. Contrasted to Magistrate Judge vacancies for the same time period, there have been a total of 1,191 applicants for 80 vacancies. This is an average of 7.33 versus 14.89 applicants per vacancy. As to the mix of these 330 applicants for District Judge, 69 were sitting Magistrate Judges, 97 were employed in the public sector, and 164 were employed in the private sector.<sup>2</sup>

A more detailed examination of the recruitment numbers for District Judge vacancies since 2000 reveals that in 5 instances no Magistrate Judges applied, in 19 instances only 1 Magistrate Judge applied, and in 13 instances 2 Magistrate Judges applied. The average number of Magistrate Judge applicants for each of these District Judge positions was just under 1.6 per vacancy.

More recently, since July 1, 2009, there have been 16 new District Judges (with 2 appointments pending, Judges Ron Wilper and Carl Kerrick). Of those 16, 14 were appointed and 2 were elected. Of the 2 which were elected, 1 was a prosecutor and 1 was a retired Magistrate Judge. Of the 14 positions filled by appointment, 5 came from full-time public law employment; 4 were Magistrate Judges; 1 was working in a private law firm which was engaged primarily in public defender work; and only 4 came from a private law firm engaged primarily in civil law practice.

The senior ranks of the private bar are generally considered to be highly desirable for judicial positions. While more lawyers from the private sector have applied than lawyers from the public sector or Magistrate Judges, too few lawyers from the private sector have been ultimately selected. This may indicate that the lawyers in private practice who are applying are not as experienced or well-regarded by their peers as are the Magistrate Judges and public sector attorneys.

### **Applicant Concerns about Applying for a District Judge Position**

To gain further insight into the “Why,” judges in all seven Judicial Districts were asked in December 2012 to identify three concerns about applying to become District Judges as well as what they have heard from practicing members of the Idaho Bar. The consensus of those responses in descending order of concern was:

1. The salary is inadequate for the nature of the work and workload of a District Judge.

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<sup>2</sup> The full listing is provided in *Attachment 2*.

2. The consequences of a contested election (win or lose) are so undesirable that even though the likelihood of having such an election is historically low, the salary is insufficient to offset the risks.
3. The initial selection process is considered by some to be “political” and unfair; discouraging some individuals from applying who might believe there is little to no chance of being selected.

The results of the Judiciary’s 2009 survey of the Idaho State Bar regarding judicial recruitment were strikingly similar.<sup>3</sup> As it relates to this Report, the survey asked the practicing bar to identify the most important factors for attracting high-caliber applicants for judicial positions. The three primary concerns and their suggested solutions stated in order were: 1) increase compensation, 2) change the selection process, and 3) eliminate contested elections.

### **Attorneys in Higher Income Brackets**

While the Judiciary does not collect, nor have the means to collect, reliable data concerning the income of all judicial applicants, it is known anecdotally that Idaho struggles to attract more experienced and highly competent attorneys who are most desirable and deserved by the public; that is, they often fail to attract attorneys from higher income brackets. The reason for this is there are significant negative financial consequences for these attorneys to join the district bench: (1) highly qualified lawyers incur a substantial pay cut; (2) their basic compensation structure changes from one driven by their own ambition, ability, and work ethic to a salary set by the legislature; (3) they lose their client base, which took years to build, and (4) they face the possibility of a career-ending contested election after turning over their clients to other attorneys.

### **Additional Considerations**

There are additional consequences to becoming a judge at any level. Both the Idaho statutes and the Judicial Canons place many restrictions on a judge’s activities, both on and off the bench. For example, judges can no longer practice law or be involved with a law office. The judge must give up the client base which took years to establish and step into a compensation structure with a finite earning capacity. Also, as a salaried employee versus owning a business, there is frequently a loss of tax benefits. In essence, practicing lawyers trade professions.

And unlike many other state, county or city employees, including publicly-paid lawyers, a judge’s activities, whether financial, civic, or otherwise, are particularly restricted by Canon 4 of the *Idaho Code of Judicial Conduct*. This Canon significantly restricts a judge’s extra-judicial activities so as to minimize the risk of conflict -- potential, perceived or real -- with judicial obligations. These restrictions are important to uphold the integrity of the judicial office and are good public policy because they address even the appearance of any impropriety, but the impacts of these restrictions on recruitment cannot be ignored.

### **Decline of Magistrate and Appellate Applicants**

Lastly, while the primary focus of this report has been on the persistence of District Judge recruiting challenges, the following chart illustrates that both Magistrate Judge and Appellate Judge recruitment numbers have declined.

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<sup>3</sup> See **Attachment 3: Respondent Opinions Regarding How to Attract the Highest Caliber of Applicants** (From Bar to Bench: Report and Recommendations to Enhance Judicial Recruitment; prepared by the Idaho Supreme Court Judicial Recruitment Committee, June 2010).

**Applicants for Magistrate Judge**

<b>Time Frame</b>	<b>Number of Applicants</b>	<b>Number of Positions</b>	<b>Average Applicants per Position</b>
1992 – 1998	472	30	15.73
2004 – Current	913	64	14.26

**Applicants for Appellate Judge**

<b>Time Frame</b>	<b>Number of Applicants</b>	<b>Number of Positions</b>	<b>Average Applicants per Position</b>
1992 – 1998	100	7	14.28
1999 – Current	77	6	12.83

**Number of Active Attorneys in Idaho**

For a little more context, according to data received from the Idaho State Bar, as of January 2014, there were 4,820 active attorneys licensed of which 1,129 were out of state, for a net total of 3,691 in state. In 2000, the number of active attorneys licensed to practice in Idaho was 2,697, and in 1992 was 2091, but the State Bar does not have the number segregated for in-state and out-of-state as it does for 2014.

In conclusion, even though the number of active attorneys has gone up considerably, applicants per available judicial position continue to decline.

## **V. The impact of a potential contested election on judicial applicants.**

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District Judges, as well as Supreme Court Justices and Court of Appeals Judges, are elected by public ballot in a non-partisan election. All District Judges are on the ballot every four years. As noted previously, the Idaho Bar identified the prospect of a contested election as one of the three major impediments to lawyers seeking a District Judgeship.

An examination of the last eight District Judge election cycles in Idaho (1982 – 2010),<sup>4</sup> demonstrates that there have been about a 2.5 % loss of incumbent District Judges to contested elections. Since retention voting for Magistrate Judges began in Idaho in 1974, there have been about a 1% loss of Magistrate Judges in these retention elections. While the frequency of contested District Judge elections on a statewide basis is historically low and the risk of loss even lower, the potential negative impact of such an election is very real and even more substantial for many reasons.

### **Why Contested Elections are a Concern for Applicants**

First, it is important to understand that being a judge is both a full time job and a career in which the judge is strictly prohibited from practicing law. Therefore, for practicing lawyers, leaving a law practice to become a judge is a significant and not easily reversible career change. For lawyers in public employment, this change entails giving up their job and seniority. For lawyers engaged in the private practice of law, this requires them to lose both their book of business and the tax benefits of operating their business, both of which took years to build. To face the prospect of a career loss in a contested election and be required to start a new career under the stigma of being voted out of office creates a significant risk which weighs heavily on many potential applicants.

Additionally, the monetary and emotional costs and expenses of a potential contested election, significant fund raising limitations, time commitment, and the inability to serve as a senior judge following such a loss are simply too much to risk. Magistrate Judges and practicing lawyers alike frequently state that win or lose, the current compensation paid to a District Judge is simply not worth the potential risk of a contested election.

Judges are required to be non-partisan, which is good public policy. But the reality of asking non-partisan judges who have distanced themselves from any political activity to engage in open campaigning constrained by the Idaho Code of Judicial Conduct and with very restricted fund raising capabilities, is just too much of a detriment for many.

The election requirement for District Judges is constitutional and the term of office is 4 years as set out in Article V, Section 11, *Idaho Constitution*. The possibility of eliminating contested elections has not been debated in the Idaho Legislature since the mid-1990s.

### **Impact of Increasing Compensation**

When a well-qualified potential applicant is weighing the “pros and cons” of leaving an established career and seeking a judgeship, if both the prospect of a contested election and the level of compensation are in the “cons” column, that person will most likely not apply. Moving compensation out of the “con” column will help tip the scale in favor of additional lawyers applying for judgeships.

Significantly increasing compensation to a level which materially influences recruitment may well produce more contested elections for District Judges at each of the 4 year election intervals, but such a result would provide an indicator that the legislature has addressed compensation to a level sufficient to make the risk of a contested election worth accepting.

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<sup>4</sup> See **Attachment 4:** Synopsis of District Judge Elections 1982 – 2010, for a more complete statement of the District Judge election and Magistrate Judge retention vote history.

## **VI. Why do so few Magistrate Judges apply for District Judge positions?**

A frequently asked question in relation to the District Judge recruiting challenge is why so few Magistrate Judges apply for these vacancies. The following explanation is intended to illustrate the recognized differences between the two judicial positions.

### **Qualifications**

The qualifications to be eligible to be a Magistrate Judge are: attain the age of 30 years, be admitted to the practice of law for at least five (5) years, and be currently licensed to practice law in the State of Idaho. I.C. § 1-2206(2).

The qualifications to be eligible to be a District Judge are: attain the age of 30 years at the time of election, be a citizen of the United States, have been admitted to the practice of law for at least ten (10) years prior to taking office, be admitted to the practice of law in the State of Idaho, and have resided within the judicial district one (1) year preceding election. Article V, §23, *Idaho Constitution* and I.C. § 34-616(2).

The following historical data demonstrates how the age of judges at the time of appointment has changed.

**Age of District and Magistrate Judges at time of appointment**

<b>Type of Judgeship</b>	<b>Average Age Upon Appointment from 1990-1999</b>	<b>Average Age Upon Appointment after July 1, 2000</b>
Magistrate Judge	40.1	47.1
District Judge	46.8	51.3

### **Selection and Election**

The initial selection of District Judges can either be by an election (I.C. § 34-616) or by gubernatorial appointment after being recommended by the Judicial Council. Article IV, §6, *Idaho Constitution*, and I.C. § 1-2102(3).

District Judges must be elected every four (4) years by the qualified electors of their respective judicial districts. Article V, §11, *Idaho Constitution*, and I.C. § 1-702. This election may be contested and the vote is district wide. I.C. § 34-616.

All Magistrate Judges are selected through the District Magistrate Commission procedure established in I.C. § 1-2205, by which they are appointed on a non-partisan merit basis, subject to disapproval by a majority of the District Judges in the judicial district.

Magistrate Judges must be retained every four (4) years by a majority of voters actually voting in the general election within the county for which the Magistrate is appointed. I.C. § 1-2220. This retention vote process is known as the “Missouri Plan.” Magistrate Judges are not subject to contested elections.

### **Jurisdictional Differences and Case Types**

The types of cases heard or jurisdiction of the two positions are different. Magistrate Judges hear all preliminary hearings in felony cases, misdemeanors, and infractions, all civil cases under \$10,000 in controversy, small claims cases up to \$5000, all juvenile, domestic relations, child protection, mental commitments, guardianships and conservatorships, and probate cases. Magistrate Judges have very broad jurisdiction, caseloads tend to be high volume, with many individual cases being of short duration.

District Judges hear the trials and conduct the sentencing of all felony cases, hear civil cases where the amount in controversy exceeds \$10,000, and hear appeals from both the Magistrate Judges as well as appeals from Administrative Agencies. District Judge caseloads tend to be lower volume but with many individual cases being of long duration.

While the relative caseloads measured by the numbers of filed cases are significant for both categories of judges, the variance in the nature, type, length and complexity of the cases between the two are the distinguishing factors.

### **Salary**

District Judge salaries are set by the Idaho Legislature and are provided for in I.C. §59-502. The current salary of an Idaho District Judge is \$114,300. Magistrate Judge salaries are statutorily set to be \$5,000 per year less than the salary of a District Judge. I.C. §1-2222. District Judges are members of the Judges' Retirement Fund (JRF). I.C. §1-2001. Magistrate Judges are members of PERSI and are designated as police officer members for retirement purposes. I.C. §59-1303(3)(g).

The anecdotal feedback from lawyers around the state is that the differences in the respective salary and benefits between Magistrate Judges and District Judges simply aren't worth the differences in the type of workload and the risk of a contested election.

In December 2012, Magistrate Judges throughout Idaho were asked to express their opinions of the differences between the two positions and to provide the reasons for the reluctance by many to apply for District Judge positions. First and foremost, many Magistrate Judges express a very high level of job satisfaction and are simply not interested in seeking a District Judge position. Many of the Magistrate Judges also related that the salary difference and retirement benefits simply do not outweigh the loss of quality of life associated with the nature of a District Judge's required work in complex civil cases, felony criminal cases, and the possibility of a contested election, even if that possibility is remote.

One factor which could contribute is that as the salary range has narrowed, the number of Magistrate Judge applicants for District Judge positions has decreased. Prior to 1998, a Magistrate Judge's salary was statutorily set to be 90% of a District Judge's salary (from 1985 to 1996 I.C. §1-2222 provided for a percentage that ranged between 80%, 85%, and 90% depending on the number of years of service). House Bill 675 (enacted in 1998) established a \$5000 a year difference in the salaries of District Judges and Magistrate Judges, phased in over five years, which was fully implemented in FY2003. The following chart shows the decline in the percentage of Magistrate Judges applying for vacancies to the District bench following full implementation of that legislation:

**Applicants for District Judge**

<b>Timeframe</b>	<b>Number of Applicants</b>	<b>Number of Magistrate Applicants</b>	<b>Percentage</b>
1992 - 1998	90	29	32.20%
2004-Current	247	45	18.20%

### **Magistrate Judge Success in the District Judge Application Process**

In 43 District Judge Appointments since 2000 ( the vacancies created by the imminent retirements of Judges Ron Wilper and Carl Kerrick are pending), the applicant pool has included 66 Magistrate Judges, 85 lawyers employed in the public sector, and 157 lawyers in private practice. These 66 Magistrate Judges comprise 21% of the total applicant pool. The actual selection to these 43 positions has been 16 Magistrate Judges or 37%, 9 from the public sector or 20%, and 18 from private practice or 43%. Despite having the lowest application rate from the 3 identified sectors,

Magistrate Judges have a high appointment rate. Statistically, a Magistrate Judge's chances of being selected are more than twice as great as either a public sector or private sector lawyer. See **Attachment 2**.

### **Summary**

In summary, Magistrate Judges expressed much of the same sentiment which was captured in the 2009 recruitment survey to the Idaho Bar, namely that the nature of the work of a District Judge was less attractive than their existing cases and there was an inadequate salary differential to make the move; the possibility of a contested election; and concerns regarding the initial selection process.

## **VII. Numerous state, county, and city employees are paid more than the Chief Justice of the Idaho Supreme Court.**

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The salary of the Chief Justice of the Idaho Supreme Court is currently \$123,400 per year. As of January 8, 2014, the Rainbow Report lists 195 State of Idaho employees with salaries greater than the Chief Justice; some are substantially greater.

While a direct comparison between duties and responsibilities of legislative, executive, and judicial officers is difficult to make, it is clear that the numerous salaries of state employees exceeding those of the Chief Justice provide some benchmark for measuring the inequity. One example could be a comparison between the Chief Justice and the Director of the Idaho Department of Commerce. Specifically, the Governor found it necessary to pay the Commerce Director, who oversees approximately 47 employees and a budget of about \$40 million, a salary of \$147,908. The Chief Justice, on the other hand, oversees 142 judges and 156 state court employees, and a budget of over \$50 million (general and dedicated funds), but whose salary is only \$123,400. This statement in no way infers that the Commerce Director is overpaid; it simply illustrates the need to substantially increase judicial salaries.

To further illustrate the Rainbow Report which lists 195 State of Idaho employees with salaries greater than the Chief Justice, when considering the current salary for a District Judge at \$114,300, the number of state employees who earn more than District Judges is even greater. Here are some relevant examples:

### **Law related positions:**

\$205,004 Lawyer, BSU  
\$158,912 General Counsel U of I  
\$153,712 Interim Dean, U of I College of Law  
\$131,352 Law Professor, U of I College of Law

### **Other positions:**

\$174,200 Director, Department of Transportation  
\$148,595 Director, Department of Health and Welfare  
\$147,908 Director, Department of Commerce  
\$131,996 Chief Operations Office, Department of Transportation  
\$130,208 Governmental Relations, U of I  
\$130,000 Chief of Staff, Governor's Office

In addition, there are numerous county paid employees in Idaho whose salaries exceed those of a District Judge. By way of a quick example from Ada County as of January 6, 2014, there are multiple public lawyer positions in both the prosecutor's office and the public defender's office who earn more than the Chief Justice:

### **Legal Positions:**

\$143,837 Ada County Prosecuting Attorney  
\$143,151 Ada County Chief Public Defender  
\$141,957 Ada County Attorney III/Chief Deputy (two positions)  
\$140,117 Ada County Attorney III/Chief Deputy  
\$138,790 Ada County Prosecuting Attorney Chief of Staff  
\$127,937 Ada County Attorney III/Chief Deputy (two positions)



**Non-Legal Positions:**

\$126,072 Ada County Director of Emergency Communications

**The following legal and non-legal positions in Ada County also earn more than District Judges:**

\$122,168 Ada County Attorney III/Chief Deputy

\$119,001 Sheriff

\$116,610 Chief Deputy Sheriff

**Other City and County positions that, as of 2012, earn more than District Judges from around the state include:**

\$160,068 City of Ketchum City Administrator

\$140,076 City of Filer Director of Public Works & Fire

\$138,008 Ada County Highway District Director

\$137,072 Ada County Highway District General Counsel

\$132,005 City of Boise Police Chief

\$125,307 City of Coeur d'Alene Legal Services Director

\$124,426 Ada County Highway District Chief of Staff

\$123,475 City of Coeur d'Alene City Administrator

\$122,457 Boise City Fire Chief

\$120,000 City of Lewiston City Manager

\$119,558 Boise City Fire Deputy Chief

\$119,265 and \$118,965 Boise City Police Deputy Chiefs

\$118,105 Boise City Attorney

\$116,986 City of Meridian Attorney/HR Director

\$115,741 Attorney II Public Defender

The above county and city data was obtained from Ada County Human Resources and [accountableidaho.com](http://accountableidaho.com).

## VIII. Idaho District Judge salaries compare poorly to other states.

A salary survey of judicial salaries for comparable judicial positions provides useful context as to where Idaho stacks up.

**Thirteen Western States Salary Comparison:** For the 13 Western States, the current (September 2013) comparisons for general jurisdiction judges (Idaho's District Judge counterparts) are as follows:

State	Salary	Rank <sup>5</sup>	Last changed
Hawaii	\$185,736	1	7/1/2013
Alaska	\$183,440	3	7/1/2013
California	\$178,789	4	11/14/2007
Nevada <sup>6</sup>	\$160,000	11	7/1/2009
Washington	\$151,809	14	9/1/2013
Wyoming	\$150,000	15	7/1/2012
Arizona	\$145,000	19	7/1/2008
Utah	\$134,800	28	7/1/2013
Colorado	\$133,228	32	7/1/2013
Montana	\$117,600	45	7/1/2013
Oregon	\$114,468	48	12/1/2011
Idaho	\$114,300	49	7/1/2012
New Mexico	\$111,631	50	7/1/2008

A more relevant comparison comes from a comparison of the 6 western states which geographically touch Idaho, which reveals the average District Judge salary to be \$138,113, and Idaho is the lowest.

State	Salary	National States Ranking <sup>7</sup>	Neighboring States Ranking <sup>5</sup>	Date Last Changed
Nevada <sup>6</sup>	\$160,000	11	1	7/1/2009
Washington	\$151,809	14	2	9/1/2013
Wyoming	\$150,000	15	3	7/1/2012
Utah	\$134,800	28	4	7/1/2013
Montana	\$117,600	45	5	7/1/2013
Oregon	\$114,468	48	6	12/1/2011
Idaho	\$114,300	49	7	7/1/2012

Yet another comparison comes from the western states used in the FY 2015 Report to the Governor on State Employee Compensation & Benefits, Department of Administration, at page 5, which are

<sup>5</sup> The relative national rankings may be adjusted by the cost of living of the respective state as indexed against other states. However, because of the statutory requirement to be licensed to practice law in Idaho, the judiciary must hire from Idaho, and the relevance of a ranking based upon a comparative cost of living index is significantly diminished.

<sup>6</sup> Please note that Nevada salaries have a longevity enhancement of 2% per year, starting after four years, up to 11 years or 22% enhancement. For example, a Nevada judge with 10 years of judicial experience earns \$192,000.

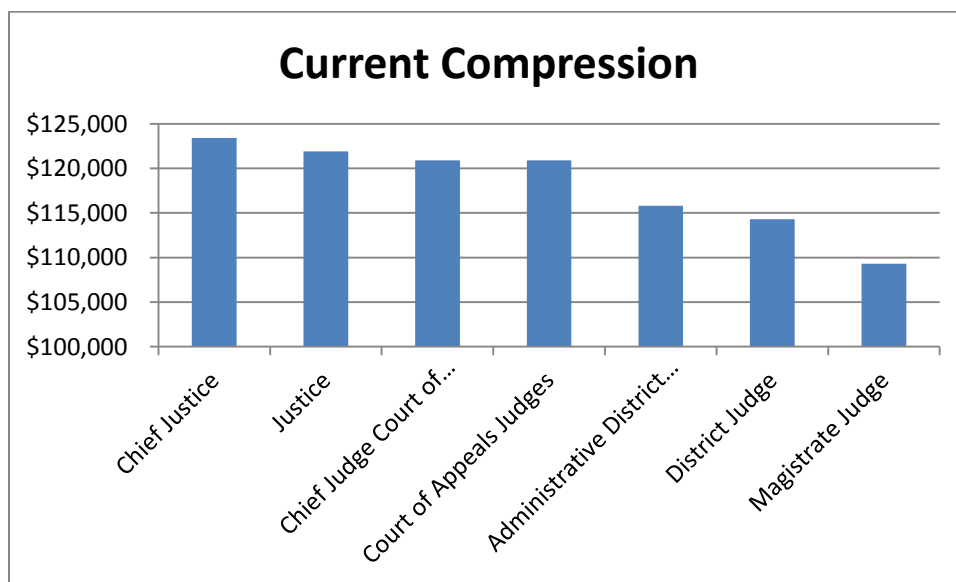
<sup>7</sup> The national rankings are based upon a scale of 1 to 51 representing the 50 states and the District of Columbia.

Arizona, Colorado, Montana, New Mexico, Utah, Washington and Wyoming. If those seven states are used, the average District Judge salary is \$134,866.

### **Hay Group Study**

Additionally, the Idaho courts retained the Hay Group to analyze judicial compensation, with particular focus on district judges (because of the variability among the duties of limited jurisdiction trial judges—Idaho’s Magistrate Judges—among the states, those positions are much more difficult to compare and were not included). The Hay Group’s report on judges found that Idaho’s District Judges are paid below the 25<sup>th</sup> percentile, whether compared to the private sector market or other public agencies in Idaho that employ lawyers with comparable experience. Idaho’s District Judges are paid at the 25<sup>th</sup> percentile when compared to the western states general jurisdiction trial judge. The trend continues with Idaho’s appellate judges—both the Court of Appeals Judges and Supreme Court Justices are also positioned at the 25<sup>th</sup> percentile of the western states judicial market.

The salary compression between District and Magistrate judgeships and the impact on recruitment has been discussed. Salary compression exists between all levels of judgeships in Idaho. The Hay Group reviewed the pay differentiation between District Court, Court of Appeals, and Supreme Court judges in the western states, and found that Idaho has the lowest differentiation among the western states between the three levels of judgeships; a mere \$14,100.



### **Conclusion**

No matter the comparison group – national, regional, or neighboring states – Idaho District Judge Salaries are at the bottom. The Supreme Court Justice pay ranks 49<sup>th</sup> in the nation.

To bring Idaho Judicial salaries to a level which will meaningfully aid recruitment, District Judge salaries need to be increased to at least \$135,000.

## **IX. Compensation for leadership roles within the Judiciary is also in need of adjustment**

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The Chief Justice of the Supreme Court is paid \$1,500 per year for the significant and time consuming additional duties of being the head of the third branch of government. I.C. § 1-201. By comparison, both the Speaker of the Idaho House of Representatives and the President Pro Tem of the Idaho Senate are paid \$4,000 annually for their respective increased leadership roles, which represents 25% of the annual salary of legislators, both of which are set by a citizens committee pursuant to I.C. § 67-406a.

For Administrative District Judges, the statute which provides for an increase to the base salary of a District Judge is I.C. § 1-703. The \$1,500 provision was enacted in 1985 and is long overdue for a substantial increase. By way of illustration, in 1985, the salary of a District Judge was \$51,720; or the Administrative District Judge enhancement was 2.9% of the salary. The current salary of a District Judge is \$114,300 per year, and the same \$1,500 Administrative District Judge enhancement is now only 1.3% of that salary, or less than 50% of what it represented when instituted. This is compounded by the fact that the role, responsibilities and importance of the job of Administrative District Judge has grown substantially over that same period of time, but the compensation for that role has remained stagnant. Administrative District Judges have broad and far ranging statutorily enumerated administrative powers and duties. I.C. § 1-907. These duties are both time consuming and complex, and include supervising both judicial and non-judicial employees.

Not currently existing in Idaho is a statutory enhancement for the Chief Judge of the Idaho Court of Appeals. It is strongly urged that this inequity be addressed to recognize the significant leadership and additional time requirements of the Chief Judge of the Court of Appeals which also supports the legislatively established salary differential for the Chief Justice and the Administrative District Judges.

The Judiciary urges addressing these important leadership positions by establishing a salary enhancement of 3%, which is a very small cost to the overall state budget.

## **X. The role of Idaho's Judiciary is evolving.**

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A fundamental goal of the Idaho Courts is to improve the timely and fair resolution of all court cases filed in the courts. But in order to meet the changing needs of the citizens of Idaho, the role of the Judiciary is necessarily growing and evolving.

In addition to the traditional role of adjudicating thousands of contested cases each year, to provide equal access to justice, promote excellence in service, and increase the public's trust and confidence in the Idaho justice system, the Courts have implemented many innovative practices. The following are just a few examples:

- Idaho's judges are nationally recognized for their proactive role in problem-solving courts - drug courts, mental health courts, DUI courts, child protection drug courts, domestic violence courts, and veteran's treatment courts. These effective, innovative courts are the result of joint efforts among all three branches of government and are an alternative to the traditional incarceration model. The result is lives saved, families restored, costs of incarceration decreased, and communities made safer.
- Family Court Services have been established in each judicial district to promote early, non-adversarial, and effective resolution of all court cases involving children and families.
- Judges are increasingly faced with the significant challenges associated with self-represented litigants. To meet these needs, Court Assistance services have been expanded to each county and include interactive court forms which have been developed in both English and Spanish. These forms and instructions are also available on the Court's website.
- The courts continue to evaluate more effective approaches for handling difficult cases involving defendants with substance use disorders and/or mental illness.
- Establishing community-based alternatives for juvenile offenders, such as youth courts, truancy courts, drug and mental health courts, status offender programs, and community accountability boards, has been a success.

Judicial leadership, long hours, and innovation continue to be the cornerstone for the success of the Idaho courts. In addition to their adjudicative responsibilities, judges plan the program for the drug court teams, oversee individual case staffing, collaborate with partner organizations, initiate community education, and preside over frequent status hearings. It is this continuity of involvement that contributes to the ongoing success of these courts.

Due to heavy and increasingly complex caseloads, more and more judges are required to work longer hours, evenings, and weekends to keep up. With the increasing societal and legal demands of the job, judges must be adequately compensated for their diligence and innovative approaches to managing their caseloads and addressing the societal issues arising in their cases. Recruiting applicants with the same qualities also requires adequate compensation.

## **XI. The timely delivery of justice is not optional – it is Constitutional.**

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The recruitment and retention of highly-qualified judges is essential to the Court's constitutional mission to provide timely, fair, and impartial justice. The following Idaho Constitutional provisions relating to timely justice are instructive:

Article I, Section 18 mandates that “justice shall be administered without sale, denial, delay, or prejudice.”

“Without delay” is not just a pleasing platitude; Article V, Section 17 requires that to be paid, a judge must first sign an affidavit—under oath—that the judge does not have any outstanding matter in controversy older than 30 days which has been finally submitted for his or her consideration and determination.

To these constitutional ends, the Citizens of Idaho need and deserve timely justice delivered by a highly qualified judiciary.

## **XII. The Idaho Judiciary is accountable for its public funding.**

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The Idaho Judiciary has long understood and appreciated that it is funded with scarce public resources for which it proudly accepts responsibility and accountability to the public. The Supreme Court reports annually to the Legislature, the Executive branch, and the general public by way of written reports which ensures transparency. As mentioned above, there is the constitutional requirement that a judge cannot be paid unless the judge first subscribes to an oath stating that all matters submitted to that judge for final determination have been decided within 30 days prior to the taking and subscribing to that oath. This requirement is strictly adhered to.

In the mid-1980s, Idaho was the first state court in the nation to adopt rigorous time standards as a benchmark for case resolution. The Supreme Court uses technology to operate a statewide case management information system (ISTARS) which assists the courts in tracking their cases from filing to resolution. The Judiciary is now in the process of enhancing and upgrading its technology software and equipment for improved court operations and public access to the courts. This will include moving to a modern, web-based computerized case management system, video-teleconferencing, and e-filing and service of court documents.

The Judiciary has undertaken a comprehensive top to bottom, system-wide review of its case processing in an effort to improve caseload management by removing any unnecessary delay while protecting the individual rights of all litigants. This significant and far reaching effort, *Advancing Justice*, includes a review of Idaho's existing time standards for case processing as well as enhancing statistical performance measures. The Idaho courts are widely recognized — on a national level — for excellence, yet the judges who are instrumental in that recognition are paid at the bottom of the nation's judges.

### **XIII. Fair conclusions and reasonable solutions.**

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Recruiting challenges persist, especially for District Judges, and the inescapable conclusion is that a significant salary increase is required to address this very real need of the Idaho Judiciary. Additionally, recruitment for other levels of judgeships within the Idaho courts is not as robust as would be ideal. Although not as dire of a problem as district judge recruitment, appellate applications have averaged just 14.2 applications per vacancy since 1992. For the top-level judgeships on the Supreme Court and Court of Appeals in the Idaho courts, these application numbers are simply too low. Even Magistrate Judge positions, although averaging almost double the number of applicants as District Judge positions, appear to be declining. From 1992 to 1998, the average number of applicants per opening was 15.26. From 2004 to the present, that average has decreased to 14.26 (the omitted years are those during which the salary of magistrate judges was being changed as discussed within on page 9).

Idaho Judges can only receive salary increases through the direct action of the Legislature. There are no cost-of-living increases, bonuses, salary incentives, adjustments through pay grades, merit increases, or other intermediate methods of recognizing and incentivizing continued excellence. In order to recruit and retain these highly trained professionals, appropriate compensation is of paramount importance.

Salary compression between the levels of judgeships in Idaho is a significant factor which must also be addressed as part of the overall recruitment solution. Establishing a salary differential between the two levels of trial judges and the two levels of appellate judges in the range of \$15,000 to \$20,000 will reasonably address the compensation issue and materially assist with recruitment.

With a salary target of \$160,000 for a Supreme Court Justice and \$135,000 for a District Judge, coupled with a 3% leadership enhancement, the on-going recruitment challenge will be addressed and assure that Idahoans have access to well qualified judges. Such action is good public policy for all of Idaho.



## Idaho Judicial Council's History of District Judges

Fiscal Year	Position	Vacancy Name	District	# Apps	Male	Female	# to Gov	Appointee	Effective Date
<b>SALARY EFFECTIVE 7/1/2000 = \$91,597</b>									
FY2001	District Judge	Wood, T. (retirement)	Seventh	6	6	0	2	Jon Shindurling	7/2/2000
FY2001	District Judge	Haman (retirement)	First	9	8	1	4	John Luster	7/4/2000
FY2001	District Judge	McKee (retirement)	Fourth	11	8	3	4	Cheri Copsey	7/31/2000
FY2001	District Judge	Eismann to Supreme Ct Justice	Fourth	10	9	1	4	Darla Williamson	1/2/2001
FY2001	District Judge	Hart (retirement)	Fifth	7	7	0	3	John Melanson	1/9/2001
FY2001	District Judge	Schilling (retirement)	Second	4	4	0	4	Jeff Brudie	5/31/2001
<b>SALARY EFFECTIVE 7/1/2001 = \$95,718</b>									
FY2002	District Judge	Kosonen (retirement)	First	6	5	1	3	Fred Gibler	7/1/2001
FY2002	District Judge	Meehl (retirement)	Fifth	8	8	0	4	John Hohnhorst	9/1/2001
FY2002	District Judge	Weston (retirement)	Third	4	3	1	3	Gregory Culet	10/1/2001
FY2002	District Judge	Judd (retiring 11/19/2001)	First	8	6	2	3	John Mitchell	11/19/2001
FY2002	District Judge	Gutierrez (appointed to Court of Appeals)	Third	6	4	2	3	Juneal C. Kerrick	4/2/2002
FY2003	District Judge	George D. Carey (retiring 12/31/2002)	Fourth	Primary Election	n/a	n/a	n/a	Mike Wetherell	1/6/2003
FY2003	District Judge	Dennis E. Goff (retiring 12/31/2002)	Third	Primary Election	n/a	n/a	n/a	Renae Hoff	1/6/2003
FY2003	District Judge	George Reinhardt III (retiring 12/2002)	Second	General Election	n/a	n/a	n/a	John Bradbury	1/6/2003
FY2003	District Judge	James R. Michaud (retiring 7/4/2002)	First	General Election	n/a	n/a	n/a	Steven C. Verby	1/6/2003
FY2004	District Judge	Roger Burdick (appointed to Supreme Court 8/1/2003)	Fifth	8	8	0	2	G. Richard Bevan	11/14/2003
FY2004	District Judge	W. H. Woodland (retiring 9/1/2003)	Sixth	10	10	0	4	Ronald E. Bush	11/21/2003
FY2004	District Judge	Nathan W. Higer (retiring 10/1/2003)	Fifth	5	5	0	3	John K. Butler	11/26/2003
FY2004	District Judge	James T. May (retiring 5/1/2004)	Fifth	3	3	0	2	Robert Elgee	6/4/2004

**ATTACHMENT 1 — Page 1**

Fiscal Year	Position	Vacancy Name	District	# Apps	Male	Female	# to Gov	Appointee	Effective Date
<b>SALARY EFFECTIVE 7/1/2006 = \$103,600</b>									
FY2007	District Judge Canyon County	New Judicial Position	Third	9	9	0	3	Gordon W. Petrie	7/5/2006
FY2007	District Judge Kootenai County	New Judicial Position	First	9	9	0	3	Lansing Haynes	9/5/2006
FY2007	District Judge Bingham County	James Herndon (retiring 12/31/2006)	Seventh	Election	n/a	n/a	n/a	Darren Simpson	1/2/2007
FY2007	District Judge Twin Falls County	John Hohnhorst (deceased)	Fifth	7	7	0	2	Randy Stoker	5/11/2007
FY2007	District Judge Canyon County	James C. Morfitt (retiring 4/30/2007)	Third	5	4	1	2	Thomas Ryan	6/16/2007
<b>SALARY EFFECTIVE 7/1/2007 = \$108,780</b>									
FY2008	District Judge Bannock County	N. Randy Smith (appt. to Federal Court)	Sixth	7	7	0	3	David Nye	7/30/2007
FY2008	District Judge Ada County	New Judicial Position	Fourth	11	11	0	4	Patrick Owen	8/13/2007
FY2008	District Judge Bonneville County	Richard T. St. Clair (retiring 3/31/2007)	Seventh	6	5	1	3	Joel E. Tingey	8/31/2007
FY2008	District Judge Cassia County	Monte B. Carlson (deceased)	Fifth	6	6	0	2	Michael R. Crabtree	10/11/2007
FY2008	District Judge Ada County	Joel Horton (appt. to Supreme Court)	Fourth	5	5	0	3	Timothy Hansen	2/1/2008
<b>SALARY EFFECTIVE 7/1/2008 = \$112,043</b>									
FY2009	District Judge (4 Counties)	Don L. Harding (retiring 6/30/2008)	Sixth	6	6	0	3	Mitchell Brown	10/1/2008
FY2009	District Judge Bannock County	Ron Bush (appt. to Federal Court)	Sixth	7	6	1	3	Stephen Dunn	10/1/2008
FY2009	District Judge Ada County	Kathryn Sticklen (retiring 1/2/2009)	Fourth	3	3	0	2	Richard Greenwood	1/5/2009
FY2009	District Judge Canyon County	Gordon Petrie (resigned 1/30/2009)	Third	8	6	2	3	Bradly Ford	4/16/2009
FY2009	District Judge Madison County	Brent Moss (retiring 3/31/2009)	Seventh	5	3	2	2	Gregory Moeller	4/24/2009
FY2010	District Judge Bannock County	Peter McDermott (retiring 08/31/2009)	Sixth	8	8	0	4	Robert C. Naftz	10/9/2009
FY2010	District Judge Washington County	Stephen Drescher (retiring 9/30/2009)	Third	4	3	1	3	Susan Wiebe	10/13/2009
FY2010	District Judge Minidoka County	John Melanson (COA appt 10/1/2009)	Fifth	8	8	0	2	Jonathan Brody	12/16/2009
FY2010	District Judge Gooding County	R. Barry Wood (retiring 12/31/2009)	Fifth	10	10	0	2	Eric Wildman	1/1/2010
FY2010	District Judge Kootenai County	Charles Hosack (retiring 12/31/2009)	First	9	8	1	3	Benjamin Simpson	1/4/2010

## ATTACHMENT 1 — Page 2

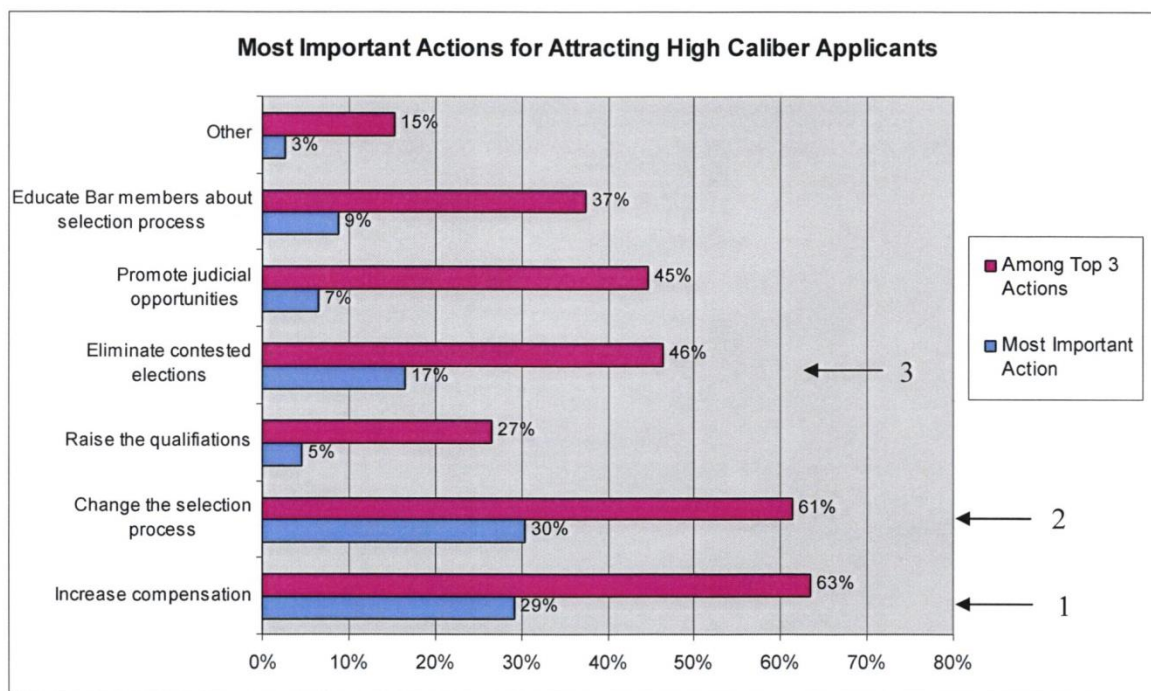
<b>Fiscal Year</b>	<b>Position</b>	<b>Vacancy Name</b>	<b>District</b>	<b># Apps</b>	<b>Male</b>	<b>Female</b>	<b># to Gov</b>	<b>Appointee</b>	<b>Effective Date</b>
FY2011	District Judge Bonneville County	Gregory Anderson (retiring 12/31/2010)	Seventh	Election	n/a	n/a	n/a	Dane Watkins	1/3/2011
FY2011	District Judge Idaho County	John Bradbury (retiring 12/31/2010)	Second	Election	n/a	n/a	n/a	Michael Griffin	1/3/2011
FY2012	District Judge Ada County	Darla Williamson (retiring 9/30/2011)	Fourth	9	5	4	4	Lynn Norton	10/3/2011
FY2012	District Judge Canyon County	Gregory Culet (retiring 12/31/2011)	Third	10	8	2	4	Molly Huskey	1/16/2012
<b>SALARY EFFECTIVE 7/1/2012 = \$114,300</b>									
FY2013	District Judge Ada County	Michael McLaughlin (retiring 6/30/2012)	Fourth	10	7	3	4	Melissa Moody	7/30/2012
FY2013	District Judge Canyon County	Rena Hoff (retiring 01/04/2013)	Third	7	5	2	2	George Southworth	1/16/2013
FY2013	District Judge Bonner County	Steve Verby (retiring 1/18/2013)	First	9	7	2	4	Barbara Buchanan	2/1/2013
FY2013	District Judge Kootenai County	John Luster (retiring 4/30/2013)	First	7	5	2	3	Richard Christensen	5/13/2013
FY2014	District Judge Jefferson County	New Position	Seventh	4	3	1	3	Alan Stephens	10/31/2013
FY2014	District Judge Ada County	New Position	Fourth	14	14	0	4	Steven Hippler	11/29/2013
FY2014	District Judge Canyon County	New Position	Third	7	7	0	3	Christopher Nye	12/31/2013
FY2014	District Judge Ada County	Ron Wilper (retiring 12/31/13)	Fourth	11	10	1			
FY2014	District Judge Nez Perce County	Carl Kerrick (retiring 1/31/2014)	Second	4	3	1			

## Idaho Judicial Council: District Judge Applicants

YEAR	DISTRICT	VACANCY	MAGISTRATE JUDGE	PUBLIC SECTOR	PRIVATE SECTOR	NEW JUDGE
2000	Seventh	Ted V. Wood	2	2	2	Public Sector
2000	First	Gary Haman	2	1	6	Magistrate Judge
2000	Fourth	D. Duff McKee	4	3	4	Public Sector
2000	Fourth	Daniel Eismann	3	3	4	Magistrate Judge
2000	Fifth	J. William Hart	2	1	4	Magistrate Judge
2001	Second	Ron Schilling	2	0	2	Private Sector
2001	Fifth	Daniel Meehl	2	0	6	Private Sector
2001	First	Craig Kosonen	0	1	5	Private Sector
2001	Third	Gerald Weston	3	1	0	Magistrate Judge
2001	First	James Judd	1	1	6	Private Sector
2002	Third	Sergio Gutierrez	3	3	0	Magistrate Judge
2003	Fifth	Nathan Higer	1	0	4	Private Sector
2003	Sixth	William Woodland	3	3	4	Private Sector
2003	Fifth	Roger Burdick	2	0	6	Private Sector
2004	Fifth	James May	1	0	2	Magistrate Judge
2006	First	New position	1	3	5	Public Sector
2006	Third	New position	2	3	4	Magistrate Judge
2007	Fifth	John Honhorst	1	2	4	Magistrate Judge
2007	Third	James Morfitt	2	2	1	Magistrate Judge
2007	Sixth	Randy Smith	1	2	4	Private Sector
2007	Fourth	New position	5	4	2	Public Sector
2007	Seventh	Richard St. Clair	0	2	4	Private Sector
2007	Fifth	Monte Carlson	1	0	5	Magistrate Judge
2007	Fourth	Joel Horton	2	2	1	Magistrate Judge
2008	Sixth	Donald Harding	1	0	5	Private Sector
2008	Sixth	Ronald Bush	1	2	4	Private Sector
2008	Fourth	Kathryn Sticklen	1	0	2	Private Sector
2008	Third	Gordon Petrie	2	4	2	Magistrate Judge
2009	Third	Stephen Drescher	1	0	3	Private Sector
2009	Sixth	Peter McDermott	1	3	4	Magistrate Judge
2009	First	Charles Hosack	2	3	4	Magistrate Judge
2009	Fifth	Barry Wood	0	5	5	Public Sector
2009	Fifth	John Melanson	0	3	5	Public Sector
2009	Seventh	Brent Moss	1	2	2	Private Sector
2011	Fourth	Darla Williamson	1	3	5	Public Sector
2011	Third	Gregory Culet	1	4	5	Public Sector
2012	Fourth	Michael McLaughlin	1	5	4	Public Sector
2012	Third	Renae Hoff	1	1	5	Magistrate Judge
2012	First	Steven Verby	3	2	4	Magistrate Judge
2013	First	John Luster	1	2	4	Private Sector
2013	Third	New Position	0	3	4	Private Sector
2013	Fourth	New position	2	7	5	Private Sector
2013	Seventh	New position	1	1	2	Private Sector
2013	Fourth	Ron Wilper	0	6	5	
2013	Second	Carl Kerrick	2	2	0	
<b>TOTAL</b>			<b>69</b>	<b>97</b>	<b>164</b>	
Magistrate Judges Appointed: 16						
Public Sector Applicants Appointed: 9						
Private Sector Applicants Appointed: 18						
<b>NOTE:</b> This chart only shows individuals who went through the application process and does not include the 2 elections (Judges Watkins and Griffin).						

## Respondent Opinions Regarding How to Attract the Highest Caliber of Applicants

Survey respondents were asked to rank the importance of potential actions for attracting the highest caliber of applicants for judicial positions. Responses are summarized in the chart below.



As the chart shows, a fair number of respondents consider each of these items to be important, though more weight is given to an increase in compensation and a change in the selection process.

In order to ascertain whether certain groups have a greater tendency than others to assign importance to certain actions, crosstabs were run to examine the relationships between demographic variables and the four most commonly selected items: increase in compensation, change in selection process, elimination of contested elections, and promotion of judicial opportunities. These data are included as Table 3 in Appendix D.

The data reveal some interesting patterns. For instance, some variation occurs between respondents with various areas of emphasis. There is also a clear relationship between sex and level of importance placed on an increase in compensation, with males (69%) being more likely than females (48%) to view this factor as important. There does not, however, appear to be an association between sex and the other actions that were examined. Slight variation can be observed between groups with varying amounts of experience. Though the differences are not great, those having more years of experience are more likely to assign importance to changing the selection process and are less likely to assign importance to the promotion of judicial opportunities.

## Synopsis of District Judge Elections 1982-2010

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A review of the last 8 election cycles over a period of 28 years which reveals that statewide, District Judges have been elected in 1982, 1986, 1990, 1994, 1998, 2002, 2006, and 2010.

In these last eight election cycles, there have been 283 District Judge positions on the primary election ballot. Of those, 14 have been for open seats where the incumbent judge was retiring and 17 have been contested elections. Of the 17 contested elections, 11 incumbent judges won while 6 ultimately lost their judgeships. Viewed differently, of the 269 positions where an incumbent judge was on the ballot, 252 were uncontested, or a ratio of about 94% uncontested and 6% contested. Of the 6% which were contested, 35% lost their judgeships in a contested election. This loss of 6 judgeships out of the 252 elections translates to about a 2 ½% historical contested election loss by incumbent District Judges.

Also of note, in the last eight District Judge election cycles, there were only two instances of a sitting Magistrate Judge challenging an incumbent District Judge, namely Judge Hart challenging Judge Bruce in 1986, and Judge Morfitt challenging Judge Gutierrez in 1994.

By way of comparison, the “Missouri Plan” retention first put Magistrate Judges on ballots in the general election of 1974. Beginning with that first retention vote in 1974, there have been more than 740 Magistrate Judge retention votes across the state, resulting in 9 Magistrate Judges who have not been retained. Specifically, those not retained were:

1974, a Cassia County Magistrate Judge;  
1982, a Butte County and a Lemhi County Magistrate Judge;  
1988, a Canyon County Magistrate Judge;  
1990, a Kootenai County and a Fremont County Magistrate Judge;  
1994, a Gooding County and a Benewah County Magistrate Judge;  
1998, a Clearwater County Magistrate Judge

The Magistrate Judge retention election history covering the entire 38 years since its inception translates into about a 1% loss based upon an election before the general public.

The following is a listing of the contested District Judge elections since 1982.

1982: 31 District Judge positions were on the primary ballot. There were four open seats; one in the 1<sup>st</sup> to succeed Judge Towles, one in the 3<sup>rd</sup> to succeed Judge Norris, one in the 6<sup>th</sup> to succeed Judge Oliver, and one in the 7<sup>th</sup> to succeed Judge Burton. There were three contested elections. In the 3<sup>rd</sup> Judicial District, Judge McClintock lost his seat (Goff) by a margin of 47% to 53%; in the 5<sup>th</sup> Judicial District Judge Bruce retained his seat in the general election following a 3 way race in the primary; and in the 6<sup>th</sup> Judicial District, Judge McDermott retained his seat by a margin of 72% to 28%.

1986: 33 District Judge positions were on the primary ballot. There were two open seats; one in the 1<sup>st</sup> to succeed Judge Prather and one in the 7<sup>th</sup> to succeed Judge Beebe. There were two contested

elections; one in the 2<sup>nd</sup> and one in the 5<sup>th</sup> Judicial Districts. In the 2<sup>nd</sup>, Judge Maynard lost his seat by a margin of 35% to 65%, and in the 5<sup>th</sup>, Judge Bruce lost his seat by a margin of 34% to 66%.

1990: 33 District Judge positions were on the primary ballot. There was one open seat to succeed Judge Ponack in the 2<sup>nd</sup> Judicial District with two candidates running. There were three contested elections; one in the 1<sup>st</sup>, one in the 3<sup>rd</sup>, and one in the 7<sup>th</sup> Judicial Districts. In the 1<sup>st</sup>, Judge Michaud retained his seat by a margin of 59% to 41%; in the 3<sup>rd</sup>, Judge Fuller retained his seat by a margin of 65% to 35%, and in the 7<sup>th</sup>, Judge George lost his seat by a margin of 48% to 52%.

1994: 34 District Judge positions were on the primary ballot. There was one open seat to succeed Judge Becker in the 5<sup>th</sup> District. There were three contested elections; one in the 1<sup>st</sup> and two in the 3<sup>rd</sup> Judicial Districts. In the 1<sup>st</sup>, there was a 3 way race to succeed Judge Michaud who ultimately retained his seat in the general election in the November run-off. In the 3<sup>rd</sup>, Judge Gutierrez retained his seat by a margin of 55% to 45%, while Judge Fuller lost his seat by a margin of 42% to 58%.

1998: 38 District Judge positions were on the primary ballot. There was one open seat to succeed Judge Newhouse in the 4<sup>th</sup>. There was one contested election in the 4<sup>th</sup>, with Judge McLaughlin retaining his seat by a margin of 64% to 36%.

2002: 38 District Judge positions were on the primary ballot. There were four open seats; one to succeed Judge Michaud in the 1<sup>st</sup>, one to succeed Judge Reinhardt in the 2<sup>nd</sup>, one to succeed Judge Goff in the 3<sup>rd</sup>, and one to succeed Judge Carey in the 4<sup>th</sup>. There were two contested elections; in the 1<sup>st</sup>, Judge Hosack retained his seat by a margin of 55% to 45%, and in the 4<sup>th</sup> Judge Copsey retained her seat by a margin of 60% to 40%.

2006: 39 District Judge positions were on the primary ballot. There were no open seats. There were two contested elections; one in the 1<sup>st</sup> where Judge Mitchell retained his seat by a margin of 65% to 35%, and in the 7<sup>th</sup> there was a three way race in the primary with a run-off in the general and Judge Herndon ultimately lost his seat by a margin of 45% to 55%.

2010: There were 37 District Judge positions on the primary ballot. There was one open seat in the 7<sup>th</sup> to succeed Judge Anderson. There was one contested election in the 5<sup>th</sup>, with Judge Elgee retaining his seat by a margin of 58% to 42%.